

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARLES DANIEL, JR.,

Petitioner,

v.

SPT. GLEBE,

Respondent.

NO. C16-241-RSM-JPD

SUPPLEMENTAL REPORT AND  
RECOMMENDATION

On February 16, 2016, petitioner Charles Daniel, Jr., filed the instant petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging the validity of his 2003 murder conviction in King County Superior Court. On February 29, 2016, the Court ordered petitioner to show cause why this petition should not be transferred to the Ninth Circuit Court of Appeals as a second or successive habeas petition. Dkt. 5. Petitioner filed a response to the Order to Show Cause on March 28, 2016 agreeing that the instant petition was a second or successive petition challenging his state court conviction, and that this case should be transferred to the Ninth Circuit to obtain an order authorizing the district court to consider his habeas claims. Dkt. 6 at 6-7.

The Court has now learned that petitioner's response to the Order to Show Cause was actually filed together with a motion for leave to amend his § 2241 petition with an amended

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1 petition for writ of habeas corpus under 28 U.S.C. § 2254, as well as a copy of the proposed  
2 amended § 2254 petition. This proposed amended § 2254 petition was separated from his  
3 response to the Order to Show Cause, and a new case was opened under Case No. C16-440-  
4 TSZ. On April 11, 2016, the Clerk received a letter from petitioner explaining that the § 2254  
5 petition had been intended to be filed as the proposed amended petition in this matter. *See* Dkt.  
6 4, Case No. C16-440-TSZ. Because C16-440-TSZ was opened in error, that case will be  
7 terminated and the proposed amended petition posted as an attachment to Dkt. 6 in this case as  
8 petitioner had intended.

9 Accordingly, the Court recommends that petitioner's motion for leave to amend his  
10 original § 2241 petition with his proposed amended § 2254 petition be GRANTED, and that  
11 his amended habeas petition, Dkt. 6, Attachment 1, be TRANSFERRED to the Ninth Circuit  
12 for consideration as an application for leave to file a successive petition.

13 The Clerk is directed to send a copy of this Report and Recommendation to petitioner,  
14 and to the Honorable Ricardo S. Martinez.

15 Objections to this Report and Recommendation, if any, should be filed with the Clerk  
16 and served upon all parties to this suit by no later than **May 11, 2016**. Failure to file objections  
17 within the specified time may affect your right to appeal. Objections should be noted for  
18 consideration on the District Judge's motion calendar for the third Friday after they are filed.  
19 Responses to objections may be filed within **fourteen (14)** days after service of objections. If  
20 no timely objections are filed, the matter will be ready for consideration by the District Judge  
21 on **May 13, 2016**.

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1 This Report and Recommendation is not an appealable order. Therefore, a notice of  
2 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until  
3 the assigned District Judge enters a judgment in the case.

4 DATED this 20th day of April, 2016.

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6 JAMES P. DONOHUE  
7 Chief United States Magistrate Judge